

## CON APPLICATION PROCESS & GENERAL PROCEDURES

Concern	Options	Discussion
<p>CON process is no longer needed for certain services:</p> <ul style="list-style-type: none"> <li>Air Ambulance</li> <li>Solid Organ Transplant</li> </ul>	<p>No longer require CON for air ambulances or solid organ transplant services.</p>	<p><b><u>Recommendation:</u></b> Divide into two separate recommendations:</p> <ul style="list-style-type: none"> <li><b><u>Recommendation #1 -</u></b> Remove air ambulance from CON statute.</li> <li><b><u>Recommendation #2 -</u></b> Remove Solid Organ Transplant services from CON statute.</li> </ul>
<p>The diagnostic service center requirements under CON are difficult to enforce and rarely reported.</p>	<ul style="list-style-type: none"> <li>Eliminate diagnostic service centers from CON requirements.</li> <li>Increase the threshold amount.</li> <li>Eliminate "clinical laboratories" from definition.</li> </ul>	<p>Held – with request for further details from DHSR.</p>
<p>Ophthalmic procedure rooms in licensed ambulatory facilities should be regulated by CON.</p>	<p>Amend CON law to allow Ophthalmic procedure rooms in licensed ambulatory surgical facilities – similar to that for gastroenterology.</p>	<p>Presentation by Dr. Christenbury – limited discussion.</p>
<p>Applications are required to be submitted in hard copy.</p>	<p>Allow for or require electronic submissions of applications.</p>	<p><b><u>Recommendation:</u></b> DHSR to look into possibilities for CON submission process.</p>
<p>More transparency is needed in the CON process.</p>	<p>Require all applications/ determination requests/requests for review as well as Agency decisions to be posted on website.</p>	<p><b><u>Recommendation:</u></b> DHSR to move with all deliberate speed with posting materials to website.</p>
<p>Monetary threshold for projects requiring a CON under 131E-176 of 2 million dollars is too low.</p>	<ul style="list-style-type: none"> <li>Increase the threshold amount.</li> <li>Account for inflation.</li> </ul>	<p><b><u>Recommendation:</u></b> Increase threshold amount to 4 million dollars.</p>
<p>Monetary threshold for expedited review of less than 5 million dollars is too low.</p>	<ul style="list-style-type: none"> <li>Increase the threshold amount.</li> <li>Account for inflation.</li> </ul>	<p><b><u>Recommendation:</u></b> Eliminate threshold.</p>

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Monetary threshold for major medical equipment requiring a CON is too low at \$750,000.	<ul style="list-style-type: none"> <li>• Increase the threshold amount.</li> <li>• Account for inflation.</li> </ul>	<b>Recommendation:</b> Increase threshold amount to 1.5 million dollars.
Monetary threshold for replacement equipment is too low at 2 million dollars.	<ul style="list-style-type: none"> <li>• Increase the threshold amount.</li> <li>• Account for inflation.</li> </ul>	Held.
Modification/changing a CON is too difficult.	<ul style="list-style-type: none"> <li>• No longer require approval for CON changes under all or special circumstances.</li> <li>• Change Scope of CON</li> </ul>	Presentation by Harnett County, using example of experience with Good Hope Hospital – limited discussion.
No statutory requirement deadline for letters of review, CON Exemption requests or Material Compliance Requests.	<ul style="list-style-type: none"> <li>• Create a deadline.</li> <li>• Require fee for such determinations.</li> </ul>	Held.
STATE HEALTH COORDINATING COUNCIL		
Concern	Options	Discussion
State Ethics Act should apply to SHCC members.	Require Council to be subject to all or part of the Act.	<ul style="list-style-type: none"> <li>• Discussion of potential conflicts between current Executive Order and Chapter 138A.</li> <li>• Discussion that the issue has already been looked at by Ethics Committee.</li> <li>• Held.</li> </ul>
Appointments should be made by legislature and Governor.	Divide membership appointments among Governor, Senate, and House of Representatives	Held.
SHCC members may have an affiliation with or be employed by providers applying for CON.	Extend prohibition in 131E-191.1 to include persons employed or affiliated with XXXX.	Provision on conflict of interest requested from DHSR – Held.
Determinations of need made by the SHCC are "outcome determinative" with respect to any CON application.	Make need determinations presumptively correct & rebuttable by evidence of specific circumstances involved in a CON application.	Held.

## STATE MEDICAL FACILITIES PLAN

Concern	Options	Discussion
Policies adopted in the SMFP are not considered rules under the APA.	<ul style="list-style-type: none"> <li>• Include under the APA.</li> <li>• Direct that certain portions of APA apply.</li> <li>• Establish SHCC by law.</li> </ul>	<b>Recommendation:</b> Do not put under APA.
The SMFP contains exceptions.	<ul style="list-style-type: none"> <li>• Eliminate/limit certain plan exemptions (AC-3).</li> <li>• Develop non-subjective criteria to qualify for exemptions.</li> </ul>	<b>Recommendation:</b> Continue to keep topic open.
SMFP does not address differences between hospitals of varying size.	<ul style="list-style-type: none"> <li>• Create occupancy tiers for hospitals with 100 beds or less and tiers for hospitals with greater than 100 beds.</li> </ul>	Held.
	<ul style="list-style-type: none"> <li>• Count the dual beds in the census count for hospitals with 100 beds or less.</li> <li>• Create a new system of classifying beds that accounts for dual purpose beds.</li> </ul>	Held.

## APPEALS PROCESS

Concern	Options	Discussion
Frivolous appeals cause unnecessary delays.	<ul style="list-style-type: none"> <li>• Prevailing party gets costs and attorneys' fees.</li> <li>• Increase penalties for frivolous appeals.</li> <li>• Stricter enforcement of imposed penalties.</li> </ul>	Held.
Appeals cause delays in provision of needed facilities and/or services.	<p>Eliminate stays. A CON issued by the State takes effect immediately upon issuance.</p> <p>Mississippi model: The filing of an appeal from a final order of the statutorily specified body or tribunal shall not stop the purchase of medical equipment or development or offering of institutional health services granted in a CON issued by the State.</p>	Concerns that cases become moot. – Held.

## APPEALS PROCESS

Concern	Options	Discussion
Bond requirements are inadequate.	<ul style="list-style-type: none"> <li>• Increase the threshold amount of required appeal bond.</li> <li>• Account for inflation.</li> <li>• Amount of bond in discretion of board or court, with requirement that any appeal of a final order in a CON proceeding requires the giving of a bond sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the appellate court within five (5) days of the date of filing the appeal.</li> <li>• Require a separate bond for each petition filed.</li> </ul>	Discussion surrounding separate bonds for each petition – Held.
Too many parties have the ability to file an appeal.	Redefine and limit "affected person" and "aggrieved party" for purposes of standing to file an appeal.	Suggestion to obtain proposed language from DHSR. – Held.
The appeals process is too lengthy.	<ul style="list-style-type: none"> <li>• Appeal from a final order or decision of the Department in a CON denial case goes to a contested case hearing before OAH and from there, directly to the Supreme Court.</li> <li>• Time limits for appeals decisions.</li> </ul> <p>e.g., Georgia model: Certificate of Need Appeal Panel consists of independent hearing officers appointed by the Governor in order to review the Dept's initial decisions to grant or deny a Certificate of Need. The decision of the appeals panel hearing officer is final unless objection is filed with the Commissioner within 60 days. Commr reviews and can award attorneys' fees and expenses if determines appeal was made for purposes of delay or harassment. Commr's Decision final unless appealed to Superior Court. However, if the Court does not hear the case within one hundred and twenty (120) days of the date of docketing in the Superior Court, the decision of the Dept. shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the 120 days has been continued to a date certain by order of the Court.</p>	Suggestion to consult with OAH and AOC. – Held.

COPA		
Concern	Options	Discussion
Purpose and scope of COPA needs to be changed.	<ul style="list-style-type: none"> <li>• Statutory change to 131E-20</li> <li>• Possible changes to Article 9A</li> </ul>	Held.
No means by which to terminate COPA.	Statutory change - Authorize COPA recipient by statute to terminate agreement ten years after a period of time in compliance	Held.
Oversight of COPA should be modified.	<ul style="list-style-type: none"> <li>• Direct through rule making.</li> <li>• Direct Program Evaluation to complete Study.</li> <li>• Direct audit by Office of State Auditor.</li> <li>• Annual or semi-annual review.</li> <li>• Changes to public review- DHSR publish response to comments.</li> </ul>	<p>Discussion of independent compliance audit by Dixon Hughes. – Held.</p> <p><b><u>Recommendation:</u></b> a more in-depth audit is needed.</p>
COPA activity should be modified.	<ul style="list-style-type: none"> <li>• Moratorium on projects.</li> <li>• Restriction on activity for COPA recipients.</li> <li>• Specify territorial limitations of protections.</li> </ul>	Held.